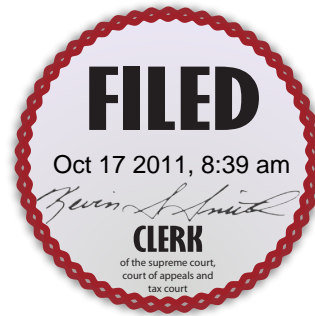


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

MICHAEL HOOTEN,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A04-1101-CR-11
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Mark D. Stoner, Judge
Cause No. 49G06-1006-MR-044294

OCTOBER 17, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

GARRARD, Senior Judge

Defendant Michael Hooten appeals his convictions for murder, a felony, Indiana Code section 35-42-1-1 (2007), and attempted murder, a Class A felony, Indiana Code sections 35-42-1-1, 35-41-5-1 (1977). We affirm.

On the afternoon of April 1, 2010, Kenyatta Robinson and Dante Lott went to an apartment complex in Indianapolis to visit a person Robinson knew as “Little Man.” Tr. p. 33. As Robinson, Lott, and Little Man walked through the apartment complex, they encountered two men, including a person later identified as Hooten. The groups went their separate ways after talking for about five minutes.

At approximately 1:30 a.m. on the following day, Robinson and Lott returned to the complex to visit Little Man again. As they walked toward Little Man’s apartment, Robinson and Lott saw Hooten with two other men. Hooten asked them where Little Man was, and Robinson told him that they were going to his apartment. As Robinson and Lott approached Little Man’s door, Hooten pulled out a handgun and shot them both. Robinson was shot twice, once in the arm and once in the back, as he tried to run away. He fell to the ground and pretended to be dead. Hooten approached Robinson, kicked him in the back of the head, and ran away. Hooten had shot Lott in the head, and Lott died as a result of the shooting.

On June 4, 2010, the State charged Hooten with murder, attempted murder, and carrying a handgun without a license, a Class A misdemeanor, Indiana Code sections 35-47-2-1 (2007) and 35-47-2-23 (1997). The trial court issued a warrant for his arrest. The police arrested Hooten on June 9, 2010.

On August 3, 2010, the trial court held a pretrial conference. During the conference, Hooten requested a speedy trial and also requested a continuance. The trial court granted both motions and noted for the record, “70th day is 10/12/10.” Appellant’s App. p. 7.

On September 28, 2010, the parties attended another pretrial conference. During the conference, the State requested a continuance. The trial court granted the State’s request over Hooten’s objection. The trial court vacated the jury trial and noted that the new trial deadline was “10/12/10.” *Id.* at 8. On October 1, 2010, the State filed another request to continue the trial, requesting a continuance of thirty to ninety days. The trial court granted the continuance over Hooten’s objection and rescheduled the trial for December 6, 2010.

The parties appeared for trial on December 6, 2010. At that time, Hooten requested a continuance, which the trial court denied. The jury found Hooten guilty as charged. The trial court declined to enter a judgment of conviction on the handgun charge, citing double jeopardy concerns. The trial court sentenced Hooten accordingly, and he now appeals.

Hooten raises one issue, which we restate as: whether the trial court abused its discretion by granting the State’s October 1, 2010 request for a continuance. Article 1, Section 12 of the Indiana Constitution guarantees the right to a speedy trial.¹ *Clark v. State*, 659 N.E.2d 548, 551 (Ind. 1995). The provisions of Indiana Criminal Rule 4 implement the defendant’s speedy trial right. *Id.* Any exigent circumstances may

¹ Hooten does not present a claim under the Sixth Amendment to the United States Constitution.

warrant a reasonable delay beyond the limitations of Criminal Rule 4, due deference being given to the defendant's speedy trial rights under the rule. *Smith v. State*, 802 N.E.2d 948, 951 (Ind. Ct. App. 2004). The reasonableness of such delay must be judged in the context of the particular case, and the decision of the trial judge will not be disturbed except for an abuse of discretion. *Id.*

Before we consider the merits of Hooten's claim, we must determine whether he has preserved it for appellate review. A defendant waives review of a speedy trial claim under Indiana Criminal Rule 4(B) unless he or she objects when a matter is set for trial beyond a Criminal Rule 4 deadline and files a motion for discharge. *See Brown v. State*, 725 N.E.2d 823, 825 (Ind. 2000) ("[T]he requirement that a defendant object to a trial date set after a Criminal Rule 4 deadline and move for discharge facilitates compliance by trial courts with the speedy trial requirement").

In the current case, Hooten was represented by counsel during trial court proceedings and did not move for discharge at any point. Therefore, his speedy trial claim is waived. Hooten attempts to avoid waiver by noting that he filed a pro se letter with the trial court on October 8, 2010. In the letter, Hooten states, "Also, could you re-look into my fast [and] speedy right. I believe these charges should be dismissed due to my right to a fast [and] speedy trial and also lack of evidence." Appellant's App. p. 53. Hooten's pro se letter does not affect our analysis. Once counsel was appointed, Hooten spoke to the court through his counsel. The trial court was not obligated to act upon Hooten's letter. *See Underwood v. State*, 722 N.E.2d 828, 832 (Ind. 2000) (determining

that the trial court did not err by failing to respond to defendant's pro se demands for a speedy trial because defendant was represented by counsel).

Hooten further attempts to avoid application of waiver by asserting that discharge and dismissal of the charges is required under the doctrine of fundamental error. The fundamental error exception is extremely narrow and applies only when an error constitutes a blatant violation of basic principles, the harm or potential for harm is substantial, and the resulting error denies the defendant fundamental due process. *Delarosa v. State*, 938 N.E.2d 690, 694 (Ind. 2010). The error claimed must either make a fair trial impossible or constitute clearly blatant violations of basic and elementary principles of due process. *Id.* This exception is available only in egregious circumstances. *Id.*

Hooten concedes that our Supreme Court has held that a deprivation of a defendant's right to a speedy trial does not constitute fundamental error. *Locke v. State*, 461 N.E.2d 1090, 1092 (Ind. 1984). In addition, under these facts we cannot conclude that the delay caused by the trial court's October 1, 2010 grant of a continuance resulted in a blatant violation of basic and elementary principles of due process. Hooten does not allege that the delay hindered his defense in any way. The trial court's grant of the State's request for a continuance does not constitute fundamental error, and the issue is not preserved for appellate review.

For the reasons stated above, we affirm the judgment of the trial court.

Affirmed.

MAY, J., and BARNES, J., concur.